upon the inquiry had before him with regard to the method of application of certain escheated property of the Church.

Mr. Varian said there was a preliminary question which must be settled on the merits of the case before the arguments were reached. At the hearing before the Master four schemes were presented—one on behalf of the Church, one on behalf of the government, and two outside of these—one on behalf of the Brigham Young University and another on behalf of five counties in the Territory. These matters were heard and considered by Master Loofbourow, and after the case had been finally submitted to him another scheme was presented. It was a written document. Upon this, filed with the Master, no evidence was taken, and subsequently his report was filed, and exceptions were taken thereto by the parties proposing this scheme. Counsel now desired to interpose an objection, to go on record, against the consideration by the Court of any of these outside schemes attempted to be lodged by parties not connected with the litigation, and who had not heretofore obtained leave of the court to intervene and be heard. He had made a motion to strike out, in particular, the exceptions made by the Brigham Young Academy, and strongly objected to the consideration now of the so-called scheme presented on its behalf. No outsider to the litigation had a right to introduce himself into the body of the suit, much less after the decree, take up the time of the court, and, therefore, a portion of the funds in controversy. If these schemes were to be admitted, practically any member of the "Mormon" Church who chose could come forward and ask to be heard on any pet scheme. The entire people of that Church were now before the court through their chosen representatives. Mr. Varian expressed his desire to file, on behalf of the Master, a supplement to his report.

This simply set forth that at the hearing had before him four schemes were submitted, that afterwards, about December 19th, 1891, the Hon. J. W. Judd presented to him the petition of A. O. Smoot and others in behalf of the Brigham Young Academy, which he endorsed and filed on the day on which it was presented. Nothing was done thereon, however, beyond that he examined the petition and brief submitted and returned the petition with the original report.

Mr. Varian said he believed counsel on the other side were of the same opinion as himself, when he urged that the outside schemes be not considered by this court. To this the Hon. F. S. Richards assented.

Judge Judd said he had no idea that it would be necessary for him to interpose at this time. When his scheme was presented to the Master, that gentleman informed him that it was in good time. If that scheme were now admitted and considered, his clients would have no objection to pay their share of any additional tax upon the funds that might be incurred. This scheme, he insisted, presented absolutely more merit than any of the others. Judge Judd asked Mr. Varian why he did not give him notice of his present motion.

Mr. Varian—I do not recognize your right. Then why should I give you notice?

The judges consulted and Chief Justice Zane said—The court is of opinion that the application on behalf of the Brigham Young Academy, filed with the master in chancery be stricken from the files and that the application for leave to file a petition now on behalf of that institution be denied. The arguments will therefore be confined to the schemes presented by parties to the suit.

Judge Judd remarked that he had prepared a brief upon the scheme presented in his position, which of course would be applied upon the arguments in a general way. It dealt simply with the main ground of the question, and he asked leave now to file it.

Attorney Dickson said his side were willing, of course, to admit Judge Judd's brief dealing with the main issue; the only objection was to the introduction of anything relating to the Brigham Young academy.

The court admitted the brief on this understanding.

Judge Zane then invited counsel to proceed with the arguments, which he stipulated must be confined to two days.

It was, therefore, mutually agreed that each side should occupy one day, and that Judge Judd should be given reasonable time.

Attorney Richard W. Young here came forward and observed that he presented to the Master, at the hearing before him, a scheme on behalf of the Young University. He asked whether the decision of the court in reference to the Brigham Young Academy governed the case of these petitioners whom he represented.

Judge Zane—The same rule will apply to your institution as well.

Hon. F. S. Richards then proceeded with his argument on the part of the petitioners. He presumed that there were now only two schemes under consideration, the one that of the Government asking that this property of the Church of Jesus Christ of Latter-day Saints be set apart for the use of the public schools, and the other proposed by the First Presidency of the Church, asking that it be devoted to certain charities, enumerated in the scheme, for the benefit of the Church. Counsel then directed attention to the latter scheme, and stated the substance of the same. He said it was clearly proven before the Master, in evidence, that this property, or these funds, had been contributed solely by members of the Church for religious and charitable purposes, and that the same was under the direction of the First Presidency. An effort was made on the part of the government to show that the purposes to which the fund should be applied were general and might be devoted in any way the First Presidency might see fit, but a careful examination of the whole testimony showed that while it was under their direction and subject to their control—for the support of the poor, the building of temples, and the repair of houses of worship—still it was left to their discretion in that regard only. As to tithing that was a purely voluntary contribution by the members of the Church. No man's fellowship was called in question because he did or did not make this contribution. He supposed that the reason why the Master did not approve of the Church scheme was because he was precluded from doing so by the decree of the Supreme Court of the United States. A large part of this fund had been used for years for the benefit of the poor and distressed members of the Church—a larger sum than could possibly arise from the income of this fund. In view of the circumstances of the case, it would be an absurdity, of which neither this court nor the Supreme Court of the United States would surely be guilty, to say: "We will set aside these lawful trusts and uses, which were the actual intentions of the donors, and hunt up some other use that most nearly corresponds to these lawful uses, and substitute that for it." Counsel dwelt at some length with the case of Romney et al., wherein it was claimed that they and the other members of the Church on whose behalf their petition was filed were equitably the owners of such property and beneficially interested therein, and pointed out the clearly apparent difference between that claim or scheme and the present one. One claimed the absolute and unrestricted ownership of the property; the other only asked to have its proceeds applied to some of the uses for which it was contributed, in conformity with the decision of the court. Besides the difference in the issues, there was another reason why the Romney application did not bar the present one. The Supreme court of the United States, in its opinion, clearly recognized this fact. It was clear from the records in this case that the Supreme court of the United States had upheld this legislation because of what it termed the "contumacious character" of the Church of Jesus Christ of Latter-day Saints. It treated on the question of polygamy and showed it to be the practice of the Church. This lay at the foundation of this litigation. Counsel referred to what the Master in Chancery, in his report, had described as the "changed conditions," and said it was abundantly proved in evidence at the late inquiry that not only had plural marriage lapsed, but had been absolutely forbidden; by the authorities of the Church, any person who practiced it would be excommunicated. That appeared prominently in the testimony and could not be controverted. What more could the heads of the Church have said than they did on this subject? In view of these facts, and that the Church had eliminated everything illegal from its precepts and practices, there was no reason and there was no excuse, for any longer withholding this property from the Church. The petitioners might with good conscience and good grace have come before the courts and asked that this property be absolutely turned over to the Church. But they did not do this. They were willing that the safeguards of the courts of law should be thrown around them, and to show to this court and the country that they were in good faith in this matter. They did not ask the court to place this fund beyond its reach, though he believed that if they did so it would ultimately grant the application. And he believed it ought to. Keep this fund, by all means, under